



AN BILLE UM CHEARTAS COIRIÚIL 2004
CRIMINAL JUSTICE BILL 2004

Mar a tionscnaíodh
As initiated

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ACTS REFERRED TO

Children Act 2001	2001, No. 24
Courts (Supplemental Provisions) Act 1961	1961, No. 39
Courts of Justice Act 1924	1924, No. 10
Criminal Assets Bureau Act 1996	1996, No. 31
Criminal Evidence Act 1992	1992, No. 12
Criminal Justice (Drug Trafficking) Act 1996	1996, No. 29
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Criminal Justice (Legal Aid) Act 1962	1962, No. 12
Criminal Justice (Miscellaneous Provisions) Act 1997	1997, No. 4
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Criminal Justice (Theft and Fraud Offences) Act 2001	2001, No. 50
Criminal Justice Act 1951	1951, No. 2
Criminal Justice Act 1984	1984, No. 22
Criminal Justice Act 1993	1993, No. 6
Criminal Justice Act 1994	1994, No. 15
Criminal Justice Act 1999	1999, No. 10
Criminal Law Act 1997	1997, No. 14
Criminal Procedure Act 1865	28 & 29 Vict., c. 18
Criminal Procedure Act 1967	1967, No. 12
Firearms Act 1925	1925, No. 17
Harbours Act 1946	1946, No. 9
Health (Eastern Regional Health Authority) Act 1999	1999, No. 13
Immigration Act 2004	2004, No. 1
Local Government Act 2001	2001, No. 37
Offences Against the State Act 1939	1939, No. 13
Petty Sessions (Ireland) Act 1851	14 & 15 Vict., c.93
Police (Property) Act 1897	60 & 61 Vict., c.30
Prevention of Corruption (Amendment) Act 2001	2001, No. 27
Prevention of Corruption Acts 1889 to 2001	
Proceeds of Crime Act 1996	1996, No. 30
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AN BILLE UM CHEARTAS COIRIÚIL 2004
CRIMINAL JUSTICE BILL 2004

BILL

entitled

5 AN ACT TO AMEND AND EXTEND THE POWERS OF THE
GARDA SÍOCHÁNA IN RELATION TO THE INVESTI-
GATION OF OFFENCES; TO AMEND CRIMINAL LAW
AND PROCEDURE IN OTHER RESPECTS, INCLUDING
10 PROVISION FOR THE ADMISSIBILITY IN EVIDENCE
OF CERTAIN WITNESS STATEMENTS, AN EXTENSION
OF THE CIRCUMSTANCES IN WHICH THE ATTORNEY
GENERAL IN ANY CASE OR, IF HE OR SHE IS THE
PROSECUTING AUTHORITY IN A TRIAL, THE DIREC-
TOR OF PUBLIC PROSECUTIONS MAY REFER A QUES-
15 TION OF LAW TO THE SUPREME COURT FOR DETER-
MINATION OR TAKE AN APPEAL IN CRIMINAL
PROCEEDINGS, A RESTRICTION OF THE OFFENCES
TO WHICH SECTION 10(4) OF THE PETTY SESSIONS
(IRELAND) ACT 1851 APPLIES, AN AMENDMENT OF
20 THE JURISDICTION OF THE DISTRICT COURT AND
THE CIRCUIT COURT IN CRIMINAL MATTERS, THE
IMPOSITION OF FIXED CHARGES IN RESPECT OF
CERTAIN OFFENCES UNDER THE CRIMINAL JUSTICE
(PUBLIC ORDER) ACT 1994, AN AMENDMENT OF THE
25 REQUIREMENTS FOR THE ISSUE OF A FIREARMS
CERTIFICATE AND AN AMENDMENT OF THE PETTY
SESSIONS (IRELAND) ACT 1851 RELATING TO THE
ISSUE AND EXECUTION OF CERTAIN WARRANTS;
AND TO PROVIDE FOR RELATED MATTERS.

30 BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Criminal Justice Act 2004. Short title and commencement.

35 (2) This Act shall come into operation on such day or days as the
Minister may appoint by order or orders either generally or with
reference to any particular purpose or provision and different days
may be so appointed for different purposes or different provisions.

2.—(1) In this Act— Interpretation.

“Act of 1967” means Criminal Procedure Act 1967;

“Act of 1984” means Criminal Justice Act 1984;

“arrestable offence” has the meaning it has in section 2 (as amended by *section 7*) of the Criminal Law Act 1997;

“Minister” means Minister for Justice, Equality and Law Reform;

“place” includes a dwelling. 5

(2) In this Act, where the context so requires—

(a) a reference to an offence shall be construed as including a reference to a suspected offence, and

(b) a reference to the commission of an offence shall be construed as including a reference to the attempted commission of an offence. 10

(3) In this Act—

(a) a reference to a section is a reference to a section of this Act unless it is indicated that a reference to some other enactment is intended, 15

(b) a reference to a subsection or paragraph is a reference to a subsection or paragraph of the provision in which the reference occurs unless it is indicated that a reference to some other provision is intended, and

(c) a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment (including this Act). 20

Expenses.

3.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas. 25

PART 2

INVESTIGATION OF OFFENCES

Designation of place as crime scene.

4.—(1) Where a member of the Garda Síochána is in—

(a) a public place, or 30

(b) any other place under a power of entry authorised by law or to which or in which he or she was expressly or impliedly invited or permitted to be,

and he or she has reasonable grounds for believing that—

(i) an arrestable offence was, is being, or may have been committed in the place, or 35

(ii) there is, or may be, in the place evidence of, or relating to, the commission of an arrestable offence that was, or may have been committed elsewhere,

he or she may, pending the giving of a direction under *subsection (3)* 40 in relation to the place, take such of the steps specified in *subsection*

(4) as he or she reasonably considers necessary to preserve any evidence of, or relating to, the commission of the offence.

5 (2) A member of the Garda Síochána who exercises powers under *subsection (1)* shall, as soon as reasonably practicable, request or cause a request to be made to a member of the Garda Síochána not below the rank of superintendent to give a direction under *subsection (3)* in relation to the place concerned.

10 (3) A member of the Garda Síochána not below the rank of superintendent may give a direction designating a place as a crime scene if he or she has reasonable grounds for believing that—

(a) either—

(i) an arrestable offence was, is being, or may have been committed in the place, or

15 (ii) there is, or may be, in the place evidence of, or relating to, the commission of an arrestable offence that was, or may have been, committed elsewhere,

and

20 (b) it is necessary to designate the place as a crime scene to preserve, search for and collect evidence of, or relating to, the commission of the offence.

25 (4) A direction under *subsection (3)* shall authorise such members of the Garda Síochána as a member of the Garda Síochána not below the rank of superintendent considers appropriate to take such steps, including all or any of the following, as they reasonably consider necessary to preserve, search for and collect evidence at the crime scene to which the direction relates:

(a) delineating and segregating the area of the crime scene by means of notices, markings or barriers;

(b) directing a person to leave the crime scene;

30 (c) removing a person who fails to comply with a direction to leave the crime scene;

(d) directing a person not to enter the crime scene;

(e) preventing a person from entering the crime scene;

35 (f) permitting a person authorised under *subsection (5)* to enter the crime scene;

(g) preventing a person from removing anything which is, or may be, evidence or otherwise interfering with the crime scene or anything at the scene;

40 (h) securing the crime scene from any unauthorised intrusion or disturbance;

(i) searching the crime scene and examining the scene and anything at the scene; and

(j) photographing or otherwise recording the crime scene and anything at the scene.

(5) A member of the Garda Síochána not below the rank of superintendent may authorise such persons as he or she considers appropriate to enter a crime scene for a specified purpose and for such period as he or she may determine.

(6) The period for which a direction under *subsection (3)* is in force shall not be longer than is reasonably necessary to preserve, search for and collect the evidence concerned. 5

(7) A direction under *subsection (3)* in relation to a place other than a public place shall, subject to *subsections (9) to (11)*, cease to be in force 24 hours after it is given. 10

(8) (a) A direction under *subsection (3)* may be given orally or in writing and, if it is given orally, shall be recorded in writing as soon as reasonably practicable.

(b) A direction under *subsection (3)* or, if it is given orally, the written record of it shall be signed by the member of the Garda Síochána giving it, shall describe the place thereby designated as a crime scene, shall state the date and time when it is given, the name and rank of the member giving it and that the member has reasonable grounds for believing that the direction is necessary to preserve, search for and collect the evidence concerned. 15 20

(9) If a judge of the District Court is satisfied by information on oath of a member of the Garda Síochána not below the rank of superintendent that—

(a) a direction under *subsection (3)* designating a place as a crime scene is in force, 25

(b) there are reasonable grounds for believing that there is, or may be, evidence at the crime scene,

(c) the continuance of the direction in force is necessary to preserve, search for and collect any such evidence, and 30

(d) the investigation of the offence to which any such evidence relates is being conducted diligently and expeditiously,

the judge may make an order continuing the direction in force for such further period, not exceeding 48 hours, as may be specified in the order commencing upon the expiration of the period for which the direction is in force. 35

(10) A direction under *subsection (3)* may be continued in force under *subsection (9)* not more than three times.

(11) If the High Court is satisfied, upon application being made to it in that behalf by a member of the Garda Síochána not below the rank of superintendent, that— 40

(a) a direction under *subsection (3)* designating a place as a crime scene is in force,

(b) there are reasonable grounds for believing that there is, or may be, evidence at the crime scene, 45

(c) exceptional circumstances exist which warrant the continuance of the direction in force to preserve, search for and collect any such evidence, and

(d) the investigation of the offence to which any such evidence relates is being conducted diligently and expeditiously,

5 the Court may make an order continuing the direction in force for such period as it considers appropriate and that is specified in the order (whether or not the direction has been continued in force under *subsection (9)*) commencing upon the expiration of the period for which the direction is in force.

10 (12) A member of the Garda Síochána who intends to make an application under *subsection (9)* or *(11)* shall, if it is reasonably practicable to do so before the application is made, give notice of it to—

(a) the occupier of the place the subject of the application, or

15 (b) if it is not reasonably practicable to ascertain the identity or whereabouts of the occupier or the place is unoccupied, the owner, unless it is not reasonably practicable to ascertain the identity or whereabouts of the owner.

20 (13) If, on an application under *subsection (9)* or *(11)*, the occupier or owner of the place concerned applies to be heard by the Court, an order shall not be made under *subsection (9)* or *(11)*, as may be appropriate, unless an opportunity has been given to the person to be heard.

25 (14) The High Court or a judge of the District Court, as may be appropriate, may attach such conditions as the Court or the judge considers appropriate to an order under *subsection (9)* or *(11)* for the purpose of protecting the interests of the occupier or owner of the place the subject of the order.

30 (15) A person who obstructs a member of the Garda Síochána in the exercise of his or her powers under this section or who fails to comply with a direction under this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both.

(16) A member of the Garda Síochána may arrest without warrant any person whom the member reasonably suspects of committing or having committed an offence under *subsection (15)*.

35 (17) Nothing in this section shall prevent—

(a) the designation of a place as a crime scene, or

(b) a member of the Garda Síochána from taking any of the steps referred to in *subsection (4)* at a place so designated,

40 if the owner or occupier of the place consents to such designation or the taking of any of those steps.

(18) In this section—

“evidence” means evidence of, or relating to, the commission of an arrestable offence;

45 “preserve”, in relation to evidence, includes any action to prevent the concealment, loss, removal, contamination or destruction of, or damage or alteration to, the evidence.

5.—(1) The Criminal Justice (Miscellaneous Provisions) Act 1997 is amended by—

(a) the substitution of the following section for section 10:

“Search warrants in relation to arrestable offences.

10.—(1) If a judge of the District Court is satisfied by information on oath of a member not below the rank of sergeant that there are reasonable grounds for suspecting that evidence of, or relating to, the commission of an arrestable offence is to be found in any place, the judge may issue a warrant for the search of that place and any persons found at that place. 5 10

(2) A member not below the rank of superintendent may, subject to subsection (3), if he or she is satisfied that there are reasonable grounds for suspecting that evidence of, or relating to, the commission of an arrestable offence is to be found in any place, issue a warrant for the search of that place and any persons found at that place. 15 20

(3) A member not below the rank of superintendent shall not issue a search warrant under subsection (2) unless he or she is satisfied— 25

(a) that the warrant is necessary for the proper investigation of the offence concerned, and 30

(b) that circumstances of urgency giving rise to the need for the immediate issue of the warrant would render it impracticable to apply to a judge of the District Court under subsection (1) for the issue of a search warrant. 35

(4) Subject to subsection (5), a search warrant under this section shall be expressed, and shall operate, to authorise a named member, accompanied by such other members or persons or both as the member thinks necessary— 40 45

(a) to enter, at any time or times within one week of the date of issue of the warrant, on production if so requested of the warrant, and if necessary by the use of reasonable force, the place named in the warrant, 50

(b) to search it and any persons found at that place, and

(c) to seize anything found at that place, or anything found in the possession of a person present at that place at the time of the search, that that member reasonably believes to be evidence of, or relating to, the commission of an arrestable offence.

(5) A search warrant issued under subsection (2) shall cease to have effect after a period of 24 hours has elapsed from the time of the issue of the warrant.

(6) A member acting under the authority of a search warrant under this section may—

(a) require any person present at the place where the search is being carried out to give to the member his or her name and address, and

(b) arrest without warrant any person who—

(i) obstructs or attempts to obstruct the member in the carrying out of his or her duties,

(ii) fails to comply with a requirement under paragraph (a), or

(iii) gives a name or address which the member has reasonable cause for believing is false or misleading.

(7) A person who obstructs or attempts to obstruct a member acting under the authority of a search warrant under this section, who fails to comply with a requirement under subsection (6)(a) or who gives a false or misleading name or address to a member shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both.

(8) The power to issue a warrant under this section is without prejudice to any other power conferred by statute to issue a warrant for the search of any place or person. 5

(9) In this section—

‘arrestable offence’ has the meaning it has in section 2 (as amended by section 7 of the *Criminal Justice Act 2004*) of the Criminal Law Act 1997; 10

‘place’ includes a dwelling.”,

and

(b) the deletion of the First Schedule.

(2) This section shall not affect the validity of a warrant issued under section 10 of the Criminal Justice (Miscellaneous Provisions) Act 1997 before the commencement of this section and such a warrant shall continue in force in accordance with its terms after such commencement. 15

Power to seize and retain evidence.

6.—(1) Where a member of the Garda Síochána who is in—

(a) a public place, or 20

(b) any other place under a power of entry authorised by law or to which or in which he or she was expressly or impliedly invited or permitted to be,

finds or comes into possession of anything and he or she has reasonable grounds for believing that it is evidence of, or relating to, the commission of an arrestable offence, he or she may seize and retain the thing for use as evidence in any criminal proceedings for such period from the date of seizure as is reasonable or, if proceedings are commenced in which the thing so seized is required for use in evidence, until the conclusion of the proceedings, and thereafter the Police (Property) Act 1897 shall apply to the thing so seized in the same manner as that Act applies to property which has come into the possession of the Garda Síochána in the circumstances mentioned in that Act. 25 30

(2) If it is represented or appears to a member of the Garda Síochána proposing to seize or retain a document under this section that the document was, or may have been, made for the purpose of obtaining, giving or communicating legal advice from or by a barrister or solicitor, the member shall not seize or retain the document unless he or she suspects with reasonable cause that the document was not made, or is not intended, solely for any of the purposes aforesaid. 35 40

(3) The power under this section to seize and retain evidence is without prejudice to any other power conferred by statute or otherwise exercisable by a member of the Garda Síochána to seize and retain evidence of, or relating to, the commission or attempted commission of an offence. 45

7.—Section 2(1) of the Criminal Law Act 1997 is amended in the definition of “arrestable offence” by the substitution of “under or by virtue of any enactment or the common law” for “under or by virtue of any enactment”.

Arrestable offences.

5 8.—Section 4 of the Act of 1984 is amended—

Amendment of section 4 of Act of 1984.

(a) in subsection (1), by the substitution of “under or by virtue of any enactment or the common law” for “under or by virtue of any enactment”,

10 (b) by the substitution of the following subsection for subsection (2):

15 “(2) (a) Where a member of the Garda Síochána arrests without warrant, whether in a Garda Síochána station or otherwise, a person whom he or she, with reasonable cause, suspects of having committed an offence to which this section applies, the person—

(i) if not already in a Garda Síochána station, may be taken to and detained in a Garda Síochána station, or

20 (ii) if he or she is arrested in a Garda Síochána station, may be detained in the station,

25 for such period as is authorised by this section if the member of the Garda Síochána in charge of the station to which the person is taken on arrest or in which he or she is arrested has at the time of the person’s arrival at the station or his or her arrest in the station, as may be appropriate, reasonable grounds for believing that his or her detention is necessary for the proper investigation of the offence.

35 (b) Where a member of the Garda Síochána arrests a person pursuant to an authority of a judge of the District Court under section 10(1), the person may be taken to and detained in a Garda Síochána station for such period as is authorised by this section if the member of the Garda Síochána in charge of the station to which the person is taken on arrest has at the time of the person’s arrival at the station reasonable grounds for believing that his or her detention is necessary for the proper investigation of the offence.”,

45 (c) in subsection (3)—

(i) by the insertion of the following paragraph after paragraph (b):

50 “(bb) A member of the Garda Síochána not below the rank of chief superintendent may direct that a person detained pursuant to a direction under paragraph (b) be

detained for a further period not exceeding twelve hours if he or she has reasonable grounds for believing that such further detention is necessary for the proper investigation of the offence concerned.”, 5

(ii) in paragraph (c), by the substitution of “paragraph (b) or (bb)” for “paragraph (b)”,

and

(d) in subsection (9), by the substitution of “for longer than twenty-four hours” for “for longer than twelve hours”. 10

Amendment of
Criminal Justice
(Drug Trafficking)
Act 1996.

9.—The Criminal Justice (Drug Trafficking) Act 1996 is amended—

(a) in section 2(1), by the substitution of the following paragraph for paragraph (a): 15

“(a) Where a member of the Garda Síochána arrests without warrant, whether in a Garda Síochána station or otherwise, a person (an ‘arrested person’) whom he or she, with reasonable cause, suspects of having committed a drug trafficking offence, the arrested person— 20

(i) if not already in a Garda Síochána station, may be taken to and detained in a Garda Síochána station, or 25

(ii) if he or she is arrested in a Garda Síochána station, may be detained in the station,

for a period or periods authorised by subsection (2) if the member of the Garda Síochána in charge of the station to which the arrested person is taken on arrest or in which he or she is arrested has at the time of the arrested person’s arrival at the station or his or her arrest in the station, as may be appropriate, reasonable grounds for believing that his or her detention is necessary for the proper investigation of the offence.”, 30 35

and

(b) in section 4(3), by the insertion of the following paragraph as paragraph (a) and the re-lettering of paragraphs (a) and (b) as paragraphs (b) and (c); 40

“(a) the substitution for paragraph (a) in subsection (1) of the following paragraph:

‘(a) Where a member of the Garda Síochána arrests a person (an “arrested person”) under a warrant issued pursuant to section 4(1), the arrested person may be 45

5 taken to and detained in a Garda Síochána station for a period or periods authorised by subsection (2) if the member of the Garda Síochána in charge of the station to which the arrested person is taken on arrest has at the time of the arrested person's arrival at the station reasonable grounds for believing that his or her detention is necessary for the proper investigation of the offence.'".

10 **10.**—Section 42 of the Criminal Justice Act 1999 is amended —

Amendment of section 42 of Criminal Justice Act 1999.

(a) in subsection (2), by the substitution of the following paragraphs for paragraphs (a) to (c):

15 “(a) there are reasonable grounds for suspecting that the prisoner has committed an offence or offences other than the offence or offences in connection with which he or she is imprisoned,

20 (b) the arrest of the prisoner is necessary for the proper investigation of the offence or offences that he or she is suspected of having committed,

25 (c) where the prisoner has previously been arrested for the same offence or offences, whether prior to his or her imprisonment or under this section, further information has come to the knowledge of the Garda Síochána since that arrest as to the prisoner's suspected participation in the offence or offences for which his or her arrest is sought.”,

and

(b) in subsection (5)—

35 (i) in paragraph (a), by the substitution of “the offence or offences in respect of which he or she was arrested” for “the offence in respect of which he or she was arrested”, and

(ii) in paragraph (b), by the substitution of “the proper investigation of that offence or those offences” for “the proper investigation of that offence”.

40 **11.**—(1) Where a person is arrested by a member of the Garda Síochána under any power conferred by law, the member may photograph the person or cause him or her to be photographed in a Garda Síochána station as soon as may be after his or her arrest for the purpose of assisting with the identification of him or her in connection with any proceedings that may be instituted against him or her

Power of Garda Síochána to photograph arrested persons.

45 for the offence in respect of which he or she is arrested.
(2) The power conferred by *subsection (1)* shall not be exercised except on the authority of a member of the Garda Síochána not below the rank of sergeant.

(3) The provisions of section 8 of the Act of 1984 shall apply to photographs (including negatives) taken pursuant to this section as they apply to photographs taken pursuant to section 6 of that Act subject to the modification that the reference in section 8(2) of that Act to proceedings for an offence to which section 4 of that Act applies shall be construed as a reference to proceedings for an offence in respect of which the person concerned is arrested, and any other necessary modifications. 5

(4) A person who refuses to allow himself or herself to be photographed pursuant to this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both. 10

(5) The power conferred by this section is without prejudice to any other power exercisable by a member of the Garda Síochána to photograph a person. 15

Amendment of Act of 1984.

12.—The Act of 1984 is amended—

(a) in section 6(4), by the substitution of “€3,000” for “£1,000”,

(b) in section 8—

(i) in subsection (2), by the substitution of “within the period of twelve months” for “within the period of six months”, and 20

(ii) in subsection (7), by the substitution of “for a period not exceeding twelve months” for “for a period not exceeding six months”,

and 25

(c) in section 28(4), by the substitution of “€3,000” for “£1,000”.

Amendment of Criminal Justice (Forensic Evidence) Act 1990.

13.—The Criminal Justice (Forensic Evidence) Act 1990 is amended—

(a) in section 2— 30

(i) in subsection (1)—

(I) by the substitution of “the provisions of subsections (4) to (8A)” for “the provisions of subsections (4) to (8)”,

(II) by the substitution of the following paragraph for paragraph (b): 35

“(b) a swab from any part of the body including the mouth but not from any other body orifice or a genital region,” 40

(III) by the substitution of the following paragraph for paragraph (c):

“(c) a swab from a body orifice, other than the mouth, or a genital region,”

- (ii) in subsection (2), by the substitution of “the provisions of subsections (3) to (8A)” for “the provisions of subsections (3) to (8)”,
- 5 (iii) in subsection (4)(b), by the substitution of “subparagraph (i), (ii) or (iii) of paragraph (a) of subsection (1) of this section” for “subparagraph (i), (ii), (iii) or (iv) of paragraph (a) of subsection (1) of this section”,
- 10 (iv) in subsection (5), by the insertion in paragraph (a)(ii) after “applies” of “or a drug trafficking offence within the meaning of section 3(1) of the Criminal Justice Act 1994”,
- (v) by the insertion of the following subsection after subsection (8):
- 15 “(8A) Where a sample of hair other than pubic hair is taken in accordance with this section, the sample may be taken either by cutting hairs or by plucking hairs singly with their roots and where hairs are plucked, no more shall be plucked than the person taking the sample reasonably considers to be necessary to constitute a sufficient sample for the purpose of forensic testing.”,
- 20 (vi) in subsection (9), by the substitution of “€3,000” for “£1,000”,
- 25 (b) in section 4(2), by the substitution of “within twelve months from the taking of the sample” for “within six months from the taking of the sample”,
- and
- 30 (c) in section 5(2), by the deletion of “and” at the end of paragraph (a) and the insertion of the following paragraph after paragraph (a):
- “(aa) make provision for—
- (i) the manner in which samples may be taken,
- 35 (ii) the location and physical conditions in which samples may be taken, and
- (iii) the persons (including members of the Garda Síochána), and the number of such persons, who may be present when samples are taken, and”.
- 40

PART 3

ADMISSIBILITY OF CERTAIN WITNESS STATEMENTS

14.—In this Part—

Definitions
(Part 3).

45 “audiorecording” includes a recording, on any medium, from which sound may by any means be produced, and cognate words shall be construed accordingly;

“proceedings” includes proceedings under section 4E (application by accused for dismissal of charge) of the Act of 1967 where oral evidence (within the meaning of subsection (5) of that section) is given;

“statement” means a statement the making of which is duly proved and includes— 5

- (a) any representation of fact, whether in words or otherwise,
- (b) a statement which has been videorecorded or audiorecorded, and
- (c) part of a statement;

“videorecording” includes a recording, on any medium, from which a moving image may by any means be produced, together with the accompanying soundrecording, and cognate words shall be construed accordingly. 10

Admissibility of certain witness statements.

15.—(1) Where a person has been sent forward for trial for an arrestable offence, a statement relevant to the proceedings made by a witness (in this section referred to as “the statement”) may be admitted in accordance with this section as evidence of any fact mentioned in it if the witness, although available for cross-examination— 15

- (a) refuses to give evidence,
- (b) denies making the statement, or 20
- (c) gives evidence which is materially inconsistent with it.

(2) The statement may be so admitted if—

- (a) the witness confirms, or it is proved, that he or she made it,
- (b) the court is satisfied—
 - (i) that direct oral evidence of any fact mentioned in it 25 would be admissible in the proceedings,
 - (ii) that it was made voluntarily, and
 - (iii) that it is reliable,

and

- (c) either— 30
 - (i) the statement was given on oath or affirmation or contains a statutory declaration by the witness to the effect that the statement is true to the best of his or her knowledge or belief, or
 - (ii) the court is otherwise satisfied that when the statement was made the witness understood the requirement to tell the truth. 35

(3) In deciding whether the statement is reliable the court shall have regard to—

- (a) whether it was given on oath or affirmation or was videorecorded, or 40

(b) if *paragraph (a)* does not apply in relation to the statement, whether there is other sufficient evidence in support of its reliability,

and shall also have regard to—

5 (i) any explanation by the witness for refusing to give evidence or for giving evidence which is inconsistent with the statement, or

(ii) where the witness denies making the statement, any evidence given in relation to the denial.

10 (4) The statement shall not be admitted in evidence under this section if the court is of opinion—

(a) having had regard to all the circumstances, including any risk that its admission or exclusion would be unfair to the accused or, if there are more than one accused, to any of them, that in the interests of justice it ought not to be so admitted, or

(b) that its admission is unnecessary, having regard to other evidence given in the proceedings.

20 (5) In estimating the weight, if any, to be attached to the statement regard shall be had to all the circumstances from which any inference can reasonably be drawn as to its accuracy or otherwise.

(6) This section is without prejudice to sections 3 to 6 of the Criminal Procedure Act 1865 and section 21 (proof by written statement) of the Act of 1984.

25 **16.—(1)** A person who makes a statement to a member of the Garda Síochána during the investigation of an arrestable offence (not being a person who is at that time suspected by any such member of having committed it) may make a statutory declaration that the statement is true to the best of the person’s knowledge and belief. Witness statements made to members of Garda Síochána.

30 (2) For the purposes of section 1(1)(d) of the Statutory Declarations Act 1938 a member of the Garda Síochána may take and receive a statutory declaration made under *subsection (1)*.

35 (3) Instead of taking and receiving such a statutory declaration the member may take the person’s statement on oath or affirmation and for that purpose may administer the oath or affirmation to him or her.

17.—(1) In this section—

Other witness statements.

40 “competent person” means a person (other than a member of the Garda Síochána) who is employed by a public authority and includes an officer of the Revenue Commissioners authorised by them to perform the functions conferred on authorised officers by the Proceeds of Crime Act 1996;

“public authority” means—

(a) a Minister of the Government,

- (b) an immigration officer appointed, or deemed to have been appointed, under section 3 of the Immigration Act 2004,
- (c) the Commissioners of Public Works in Ireland,
- (d) a local authority within the meaning of the Local Government Act 2001, 5
- (e) the Eastern Regional Health Authority,
- (f) an area health board within the meaning of the Health (Eastern Regional Health Authority) Act 1999,
- (g) a health board,
- (h) a harbour authority within the meaning of the Harbours Act 1946, 10
- (i) a board or other body (not being a company) established by or under statute,
- (j) a company in which all the shares are held by, or on behalf of, or by directors appointed by, a Minister of the Government, or 15
- (k) a company in which all the shares are held by a board or other body referred to in *paragraph (i)*, or by a company referred to in *paragraph (j)*.

(2) A person who makes a statement to a competent person in the course of the performance of the competent person's official duties may make a statutory declaration that the statement is true to the best of the person's knowledge and belief. 20

(3) For the purposes of section 1(1)(d) of the Statutory Declarations Act 1938 a competent person may take and receive a statutory declaration made under *subsection (2)*. 25

Regulations concerning certain witness statements which are recorded.

18.—(1) The Minister may, in relation to any statements of witnesses that may be videorecorded or audiorecorded by members of the Garda Síochána while investigating offences, make provision in regulations for— 30

- (a) the manner in which any such recordings are to be made and preserved, and
- (b) the period for which they are to be retained.

(2) Any failure by a member of the Garda Síochána to comply with a provision of the regulations shall not of itself— 35

- (a) render the member liable to civil or criminal proceedings, or
- (b) without prejudice to the power of a court to exclude evidence at its discretion, render inadmissible in evidence anything said during the recording concerned. 40

Amendment of section 4E of Act of 1967.

19.—Section 4E (application by accused for dismissal of charge) of the Act of 1967 is amended in subsection (5)(b)—

- (a) by the substitution of “section 4F, or” for “section 4F.” in subparagraph (ii), and

(b) by the addition of the following subparagraph:

“(iii) any other videorecording, or an audiorecording, which may be admitted by the trial court as evidence of any fact stated in it.”.

5

PART 4

APPEALS IN CERTAIN CRIMINAL PROCEEDINGS

20.—The Act of 1967 is amended by the substitution of the following section for section 34:

Reference of question of law to Supreme Court.

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“Reference of question of law to Supreme Court.

34.—(1) Where a person tried on indictment is acquitted (whether in respect of the whole or part of the indictment) the Attorney General in any case or, if he or she is the prosecuting authority in the trial, the Director of Public Prosecutions may, without prejudice to the verdict or decision in favour of the accused person, refer a question of law arising during the trial to the Supreme Court for determination.

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(2) Where a question of law is referred to the Supreme Court under subsection (1), the statement of the question shall be settled by the Attorney General or the Director of Public Prosecutions, as may be appropriate, after consultation with the trial judge concerned or, in the case of a Special Criminal Court, with the member of that Court who pronounced the decision of the Court in the trial concerned following consultation by that member with the other members of the Court concerned and shall include any observations which the judge or that member, as may be appropriate, may wish to add.

25

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(3) For the purpose of considering a question referred to it under this section, the Supreme Court shall hear argument—

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(a) by, or by counsel on behalf of, the Attorney General or the Director of Public Prosecutions, as may be appropriate,

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(b) if the acquitted person so wishes, by counsel on his or her behalf or, with the leave of the Court, by the acquitted person himself or herself, and

45

(c) if counsel are assigned under subsection (4), such counsel.

(4) The Supreme Court shall assign counsel to argue in support of the decision if—

(a) the acquitted person waives his or her right to be represented or heard under subsection (3)(b), or

(b) notwithstanding the fact that the acquitted person exercises his or her right to be represented or heard under subsection (3)(b), the Court considers it desirable in the public interest to do so. 5

(5) The Supreme Court shall ensure, in so far as it is reasonably practicable to do so, that the identity of the acquitted person in proceedings under this section is not disclosed during the proceedings unless the person agrees to the use of his or her name in the proceedings. 10 15

(6) If the acquitted person wishes to be represented in proceedings before the Supreme Court under this section and a legal aid (Supreme Court) certificate is granted under subsection (7), or is deemed to have been granted under subsection (8), in respect of him or her, he or she shall be entitled to free legal aid in the preparation and presentation of any argument that he or she wishes to make to the Court and to have a solicitor and counsel assigned to him or her for that purpose in the manner prescribed by regulations under section 10 of the Criminal Justice (Legal Aid) Act 1962. 20 25 30

(7) The acquitted person may, in relation to proceedings under this section, apply for a legal aid (Supreme Court) certificate to the Supreme Court either —

(a) by letter addressed to the registrar of the Supreme Court setting out the facts of the case and the grounds of the application, or 35

(b) to the Supreme Court itself,

and the Court shall grant the certificate if (but only if) it appears to the Court that the means of the person are insufficient to enable him or her to obtain legal aid. 40

(8) If a legal aid (trial on indictment) certificate was granted in respect of the acquitted person in relation to the trial on indictment concerned, a legal aid (Supreme Court) certificate shall be deemed to have been granted in respect of him or her in relation to proceedings under this section. 45 50

(9) In this section ‘legal aid (Supreme Court) certificate’ and ‘legal aid (trial on indictment) certificate’ have the meanings

they have in the Criminal Justice (Legal Aid) Act 1962.”.

21.—The Courts of Justice Act 1924 is amended by the substitution of the following section for section 29:

Decision of Court of Criminal Appeal final save on certificate of Court, Attorney General or Director of Public Prosecutions.

5 “Decision of Court of Criminal Appeal final save on certificate of Court, Attorney General or Director of Public Prosecutions.

29.—(1) No appeal shall lie to the Supreme Court from a determination by the Court of Criminal Appeal of any appeal or other matter except in accordance with this section.

10 (2) A person the subject of an appeal or other matter determined by the Court of Criminal Appeal may appeal the decision of that Court to the Supreme Court if that Court or the Attorney General in any case or, if he or she is the prosecuting authority in the matter, the Director of Public Prosecutions certifies that the decision involves a point of law of exceptional public importance and that it is desirable in the public interest that the person should take an appeal to the Supreme Court.

15 (3) The Attorney General in any case or, if he or she is the prosecuting authority in the matter, the Director of Public Prosecutions may, in relation to an appeal or other matter determined by the Court of Criminal Appeal and without prejudice to the decision in favour of the accused person, appeal the decision of that Court to the Supreme Court if that Court or the Attorney General in any case or, if he or she is the prosecuting authority in the matter, the Director of Public Prosecutions certifies that the decision involves a point of law of exceptional public importance and that it is desirable in the public interest that the Attorney General or the Director of Public Prosecutions, as may be appropriate, should take an appeal to the Supreme Court.

20 (4) The Supreme Court shall, in an appeal under subsection (3) of this section, hear argument—

25 (a) by, or by counsel on behalf of, the Attorney General or the Director of Public Prosecutions, as may be appropriate,

30 (b) if the accused person so wishes, by counsel on his or her behalf or, with the leave of the Court, by the accused person himself or herself, and

35 (c) if counsel are assigned under subsection (5) of this section, such counsel.

(5) The Supreme Court shall, in an appeal under subsection (3) of this section, assign counsel to argue in support of the decision if—

(a) the accused person waives his or her right to be represented or heard under subsection (4)(b) of this section, or 5

(b) notwithstanding the fact that the accused person exercises his or her right to be represented or heard under subsection (4)(b) of this section, the Court considers it desirable in the public interest to do so. 10 15

(6) The Supreme Court shall ensure, in so far as it is reasonably practicable to do so, that the identity of the accused person in an appeal under subsection (3) of this section is not disclosed during the appeal unless the person agrees to the use of his or her name in the appeal. 20

(7) If the accused person wishes to be represented in an appeal under subsection (3) of this section and a legal aid (Supreme Court) certificate is granted under subsection (8) of this section, or is deemed to have been granted under subsection (9) of this section, in respect of him or her, he or she shall be entitled to free legal aid in the preparation and presentation of any argument that he or she wishes to make to the Court and to have a solicitor and counsel assigned to him or her for that purpose in the manner prescribed by regulations under section 10 of the Criminal Justice (Legal Aid) Act 1962. 25 30 35

(8) The accused person may, in relation to an appeal under subsection (3) of this section, apply for a legal aid (Supreme Court) certificate to the Supreme Court either— 40

(a) by letter addressed to the registrar of the Supreme Court setting out the facts of the case and the grounds of the application, or 45

(b) to the Supreme Court itself,

and the Court shall grant the certificate if (but only if) it appears to the Court that the means of the person are insufficient to enable him or her to obtain legal aid. 50

(9) If a legal aid (trial on indictment) certificate was granted in respect of the accused person in relation to the trial on indictment

concerned, a legal aid (Supreme Court) certificate shall be deemed to have been granted in respect of him or her in relation to an appeal under subsection (3) of this section.

5 (10) In this section ‘legal aid (Supreme Court) certificate’ and ‘legal aid (trial on indictment) certificate’ have the meanings they have in the Criminal Justice (Legal Aid) Act 1962.”.

10 **22.**—Section 2(2) of the Criminal Justice Act 1993 is amended by the insertion of “, or such longer period not exceeding 56 days as the Court may, on application to it in that behalf, determine,” after “within 28 days”.

Amendment of section 2(2) of Criminal Justice Act 1993.

15 **23.**—(1) Where a person tried on indictment is acquitted (whether in respect of the whole or part of the indictment) the Attorney General or the Director of Public Prosecutions, as may be appropriate, may appeal an order for costs made by the trial court against the Attorney General or the Director of Public Prosecutions in favour of the accused person to the Court of Criminal Appeal.

Appeal against order for costs.

20 (2) An appeal under this section shall be made, on notice given to the accused person, within 28 days, or such longer period not exceeding 56 days as the trial court may, on application to it in that behalf, determine, from the day on which the order is made.

PART 5

25 MISCELLANEOUS

24.—(1) The Criminal Justice Act 1951 is amended by the substitution of the following section for section 7:

Restriction of section 10(4) of Petty Sessions (Ireland) Act 1851.

30 “Restriction of section 10(4) of Petty Sessions (Ireland) Act 1851.

7.—Paragraph 4 (which prescribes time limits for the making of complaints in cases of summary jurisdiction) of section 10 of the Petty Sessions (Ireland) Act 1851 shall not apply to a complaint in respect of:

(a) a scheduled offence, or

35 (b) an offence that is triable either on indictment or, subject to certain conditions including the consent of the prosecution, summarily.”.

(2) This section shall not have effect in relation to an offence committed before the commencement of this section.

40 **25.**—The Courts of Justice Act 1924 is amended by the insertion of the following section after section 79:

Amendment of Courts of Justice Act 1924.

45 “Exercise of jurisdiction by District Court judges in criminal cases.

79A.—(1) Where, in respect of a crime committed in the State—

(a) the accused does not reside in the State,

(b) he or she was not arrested for and charged with the crime in the State, and

(c) either—

(i) the crime was committed in more than one district court district, or

(ii) it is known that it was committed in one of not more than five district court districts, but the particular district concerned is not known,

then, for the purposes of section 79 of this Act, the crime shall be deemed to have been committed in each of the districts concerned and a judge assigned to any of the districts concerned may deal with the case.

(2) Where the circumstances of a crime committed in the State fall within paragraphs (a) and (b), but not (c), of subsection (1) of this section and the district court district in which the crime was committed is not known, then, for the purposes of section 79 of this Act, the crime shall be deemed to have been committed in the Dublin Metropolitan District.

(3) A case does not fall within this section unless it is shown that reasonable efforts have been made to ascertain the whereabouts of the accused for the purposes of arresting him or her for and charging him or her with the crime concerned.

(4) Where a judge for the time being assigned to a district court district exercises jurisdiction in a criminal case by virtue of this section, the judge or any other judge assigned to the district shall have jurisdiction in the case until its conclusion in the District Court notwithstanding that it is later established that, but for this subsection, he or she would not have jurisdiction in the case.

(5) A judge for the time being assigned to a district court district who exercises jurisdiction in a criminal case by virtue of this section may deal with the case in any court area within his or her district.”.

Amendment of Courts (Supplemental Provisions) Act 1961.

26.—The Courts (Supplemental Provisions) Act 1961 is amended—

(a) in section 25(4), by the insertion of “and section 25A of this Act” after “subsection (3) of this section”, and

(b) by the insertion of the following section after section 25:

“Exercise of jurisdiction by Circuit Court judges in indictable offences.

25A.—(1) Where, in respect of an offence committed in the State—

(a) the accused person does not reside in the State,

(b) he or she was not arrested for and charged with the offence in the State, and

(c) either—

(i) the offence was committed in more than one circuit, or

(ii) it is known that it was committed in one of not more than three circuits, but the particular circuit concerned is not known,

then, for the purposes of section 25(3) of this Act, the offence shall be deemed to have been committed in each of the circuits concerned and a judge of any of the circuits concerned may deal with the case.

(2) Where the circumstances of an offence committed in the State fall within paragraphs (a) and (b), but not (c), of subsection (1) of this section and the circuit in which the offence was committed is not known, then, for the purposes of section 25(3) of this Act, the offence shall be deemed to have been committed in the Dublin Circuit.

(3) A case does not fall within this section unless it is shown that reasonable efforts have been made to ascertain the whereabouts of the accused person for the purposes of arresting him or her for and charging him or her with the offence concerned.

(4) Where a judge of a circuit exercises jurisdiction in relation to an indictable offence by virtue of this section, the judge or any other judge assigned to the circuit shall have jurisdiction in relation to the offence until the conclusion of proceedings in respect of it in the Circuit Court notwithstanding that it is later established that, but for this subsection, he or she would not have jurisdiction in relation to the offence.

(5) In this section ‘offence’ means an indictable offence as respects which jurisdiction is vested in the Circuit Court by section 25 of this Act.”.

Anonymity of certain witnesses.

27.—(1) Where in any criminal proceedings— 5

(a) it is proposed to call a person to give evidence, and

(b) the person has a medical condition,

an application may be made for an order under this section prohibiting the publication of any matter relating to the proceedings which would identify the person as a person having that condition. 10

(2) An application for such an order may be made at any stage of the proceedings and shall be made—

(a) in case the accused person has been sent forward for trial, to the trial judge,

(b) in case the proceedings are proceedings on appeal, to the judge, or a judge, of the appeal court, 15

(c) in any other case, to a judge of the District Court.

(3) An order under this section may be made only where the judge concerned is satisfied that—

(a) the person concerned has a medical condition, 20

(b) his or her identification as a person with that condition would be likely to cause undue distress to him or her, and

(c) the order would not be prejudicial to the interests of justice.

(4) An appeal from a refusal or grant of an application for an order under this section shall lie to a judge of the High Court at the instance of the prosecution or the defence. 25

(5) Where—

(a) an accused person is sent forward for trial, and

(b) an order has been made by a judge of the District Court under this section, 30

the trial judge may, on application made in that behalf, vary or revoke the order.

(6) Where—

(a) an appeal is being taken against a decision of a court in criminal proceedings, and 35

(b) the trial judge has made an order under this section,

the judge, or a judge, of the appeal court may, on application made in that behalf, vary or revoke the order.

(7) An application under this section, or an appeal under *subsection (4)*, may be made by the prosecution or the defence on notice 40

to the other party to the proceedings and shall be made to the judge concerned in chambers.

5 (8) Each of the following persons who publishes or broadcasts any matter in contravention of an order under this section is guilty of an offence and is liable on conviction on indictment to a fine not exceeding €13,000 or imprisonment for a term not exceeding 3 years or both:

10 (a) if the matter is published in a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical,

(b) if the matter is published otherwise, the person who publishes it, or

15 (c) if the matter is broadcast, any person transmitting or providing the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

20 (9) Where a person is charged with an offence under *subsection (8)*, it is a defence to prove that at the time of the alleged offence the person was not aware, and neither suspected nor had any reason to suspect, that the publication or broadcast concerned was of any such matter as is mentioned in *subsection (1)*.

25 (10) (a) Where an offence under *subsection (8)* has been committed by a body corporate and it is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person who, when the offence was committed, was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

30 (b) Where the affairs of a body corporate are managed by its members, *paragraph (a)* shall apply in relation to the acts and defaults of a member in connection with the functions of management as if he or she were a director or manager of the body corporate.

(11) In this section—

40 “broadcast” means the transmission, relaying or distribution by wireless telegraphy of communications, sounds, visual images or signals, intended for reception by the public generally or a section of it, whether the broadcast is so received or not, and cognate words shall be construed accordingly;

45 “publish” means publish, other than by way of broadcast, to the public generally or a section of it;

50 “trial judge” and “judge”, in relation to proceedings before a Special Criminal Court, means a member of that Court, and the references in *subsections (2)(a)* and *(5)(a)* to an accused person being sent forward for trial include, where appropriate, references to such a person being charged before that Court.

28.—(1) For the purposes of an investigation into whether a person has committed an arrestable offence a member of the Garda Síochána not below the rank of superintendent may apply to a judge of the High Court for an order for the disclosure of information regarding any trust in which the person may have an interest or with which the person may be otherwise connected. 5

(2) On such an application the judge, if satisfied—

(a) that there are reasonable grounds for suspecting that a person—

(i) has committed an arrestable offence, and 10

(ii) has some interest in or other connection with the trust,

(b) that information regarding the trust is required for the purposes of such an investigation, and

(c) that there are reasonable grounds for believing that it is in the public interest that the information should be disclosed for the purposes of the investigation, having regard to the benefit likely to accrue to the investigation and any other relevant circumstances, 15

may order the trustees of the trust and any other persons (including the suspected person) to disclose to the applicant or other member of the Garda Síochána designated by the applicant such information as he or she may require for those purposes in relation to the trust, including the identity of the settlor and any or all of the trustees and beneficiaries. 20
25

(3) An order under this section—

(a) shall not confer any right to production of, or access to, any information subject to legal privilege, and

(b) shall have effect notwithstanding any other obligation as to secrecy or other restriction on disclosure of information imposed by statute or otherwise. 30

(4) A judge of the High Court may vary or discharge an order under this section on the application of any person to whom it relates or a member of the Garda Síochána.

(5) A trustee or other person who without reasonable excuse— 35

(a) fails or refuses to comply with an order under this section, or

(b) discloses information which is false or misleading,

is guilty of an offence and liable—

(i) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or 40

(ii) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.

(6) Any information disclosed by a person in accordance with this section is not admissible in evidence in any criminal proceedings against the person or his or her spouse, except in any proceedings for an offence under *subsection (5)(b)*.

5 (7) In this section “information” includes—

- (a) a document or record, and
- (b) information in non-legible form.

29.—The Criminal Justice (Public Order) Act 1994 is amended by the insertion of the following sections after section 23:

Amendment of
Criminal Justice
(Public Order) Act
1994.

10 “Fixed charge
offences.

23A.—(1) A member of the Garda Síochána who has reasonable grounds for believing that a person is committing, or has committed, an offence under section 5 (in this section referred to as a ‘fixed charge offence’) may serve on the person personally or by post the notice referred to in subsection (5) or cause it to be so served.

15

(2) A member of the Garda Síochána may, for the purposes of subsection (1)—

20

(a) request the person concerned to give his or her name and address and to verify the information given, and

25

(b) if not satisfied with the name and address or any verification given, request that the person accompany the member to a Garda Síochána station for the purpose of confirming the person’s name and address.

30

(3) A person who—

35

(a) does not give his or her name and address when requested to do so under subsection (2)(a) or gives a name or address that is false or misleading, or

(b) does not comply with a request by a member of the Garda Síochána under subsection (2)(b),

40

is guilty of an offence and is liable on summary conviction to a fine not exceeding €1,500.

45

(4) A member of the Garda Síochána who is of opinion that a person is committing, or has committed, an offence under subsection (3) may arrest the person without warrant.

(5) The notice referred to in subsection (1) shall be in the prescribed form and shall state—

(a) that the person on whom it is served is alleged to have committed the fixed charge offence concerned, 5

(b) when and where it is alleged to have been committed,

(c) that a prosecution for it will not be instituted if— 10

(i) during the period of 28 days beginning on the date of the notice, the person pays to a member of the Garda Síochána at a specified Garda Síochána station or to another specified person at a specified place the prescribed amount, or 15

(ii) within 28 days beginning on the expiration of that period, the person so pays an amount which is 50 per cent greater than the prescribed amount, and 25

(d) that in default of such payment the person will be prosecuted for the alleged offence.

(6) A payment referred to in subsection (5) shall be accompanied by the notice referred to in that subsection. 30

(7) Where a notice is served under subsection (1)—

(a) a person to whom the notice applies may make a payment in accordance with subsections (5)(c) and (6), 35

(b) a member of the Garda Síochána or other specified person shall receive the payment, issue a receipt for it and retain it for payment or disposal in accordance with subsection (8)(b), 40

(c) a payment so received shall not be recoverable by the person who made it, and 45

(d) a prosecution in respect of the alleged fixed charge offence to which the notice relates shall not be instituted during the periods specified in subsection (5)(c) or, 50

if a payment is made in accordance with that subsection and subsection (6), at all.

5 (8) (a) In proceedings against a person for a fixed charge offence it shall be presumed, until the contrary is shown, that the person did not make payment in accordance with subsections (5)(c) and (6).

10 (b) Payments so made shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance directs.

15 (9) (a) The Minister may make regulations prescribing anything which is referred to in this section as prescribed.

20 (b) Different amounts may be prescribed for a fixed charge offence under this section and an offence under section 4 which is deemed by section 23B(4) to be a fixed charge offence.

25 (c) Regulations made under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary for the purposes of the regulations.

30 (10) In this section—

‘Minister’ means Minister for Justice, Equality and Law Reform;

35 ‘person’ means a person of not less than 18 years of age.

Application of section 23A in relation to offence under section 4.

40 23B.—(1) This section applies to a person of not less than 18 years of age who is suspected, with reasonable cause, by a member of the Garda Síochána of committing, or of having committed, an offence under section 4.

(2) Where—

45 (a) a person to whom this section applies is arrested and brought to a Garda Síochána station, and

50 (b) he or she is a person whom the member of the Garda Síochána in charge of the station is authorised by section 31 of the Criminal Procedure Act 1967 to release on bail,

the member may, instead of releasing the person on bail, release him or her unconditionally after serving on the person personally a notice in the prescribed form stating the matters specified in section 23A(5) or causing it to be so served. 5

(3) Where a person to whom this section applies is not arrested, the member of the Garda Síochána referred to in subsection (1) may serve on the person personally or by post a notice in the prescribed form stating the matters specified in section 23A(5) or causing it to be so served. 10

(4) On the service of a notice under subsection (2) or (3) the offence under section 4 is thereupon deemed to be a fixed charge offence, and subsections (5) to (10) of section 23A apply and have effect accordingly in relation to it.”. 15

Amendment of section 4 of Firearms Act 1925.

30.—Section 4 of the Firearms Act 1925 is amended— 20

(a) in paragraph (c), by the substitution of “certificate, and” for “certificate.”,

(b) by the insertion of the following paragraph after paragraph (c):

“(d) in the case of an application for a firearms certificate made to a superintendent of the Garda Síochána, has provided, to the superintendent’s satisfaction, secure accommodation for the firearm concerned at the address where it is to be kept.”, and 25 30

(c) by the numbering of the section as subsection (1) and the addition of the following subsections:

“(2) For the purposes of subsection (1)(d) of this section the superintendent or a member of the Garda Síochána acting on his or her behalf may inspect the accommodation referred to in that subsection or require the applicant to provide proof of its existence. 35

(3) If the superintendent or the Minister (as the case may require) is not satisfied as to the matters specified in the said subsection (1)(d), he or she shall refuse to issue a firearms certificate to the applicant under this Act and shall inform the applicant of the refusal and the reason for it.”. 40

Amendment of section 48 of Children Act 2001.

31.—The Children Act 2001 is amended by the substitution of the following section for section 48: 45

“48.—(1) Subject to subsection (2), in civil or criminal proceedings against a child, evidence shall not be admissible in respect of—

(a) any acceptance by the child of responsibility for criminal behaviour in respect of which the child has been admitted to the Programme, 50

(b) that behaviour, or

(c) the child's involvement in the Programme.

5 (2) Where the court is considering the sentence (if any) to be imposed in respect of an offence committed by a child after the child's admission to the Programme, the prosecution may inform it of any of the matters referred to in subsection (1).".

10 **32.**—Section 30A(3) of the Offences Against the State Act 1939 is amended by the substitution of “for the purpose of charging him or her with that offence forthwith or bringing him or her before a Special Criminal Court as soon as practicable so that he or she may be charged with that offence before that Court” for “for the purpose of charging him with that offence forthwith”. Amendment of section 30A(3) of Offences Against the State Act 1939.

15 **33.**—(1) Section 5 of the Criminal Evidence Act 1992 is amended in subsection (4)(b) by the insertion of the following subparagraph after subparagraph (ii): Amendment of section 5 of Criminal Evidence Act 1992.

20 “(iia) a record of the receipt, handling, transmission or storage of anything by the Forensic Science Laboratory of the Department of Justice, Equality and Law Reform in connection with the performance of its functions to examine and analyse things or samples of things for the purposes of criminal investigations or proceedings or both.”

25 (2) This section shall be deemed to have come into operation on 1 January 2003.

34.—(1) Section 14 of the Criminal Assets Bureau Act 1996 is amended by the substitution of the following subsection for subsection (1): Amendment of section 14 of Criminal Assets Bureau Act 1996.

30 “(1) If a judge of the District Court is satisfied by information on oath of a bureau officer who is a member of the Garda Síochána that there are reasonable grounds for suspecting that evidence of or relating to assets or proceeds deriving from criminal activities, or to their identity or whereabouts, is to be found in any place, the judge may issue a warrant for the search of that place and any person found at that place.”

(2) This section shall not affect the validity of a warrant issued under section 14 of the Criminal Assets Bureau Act 1996 before the commencement of this section and such a warrant shall continue in force in accordance with its terms after such commencement.

40 **35.**—(1) Section 5 of the Prevention of Corruption (Amendment) Act 2001 is amended by the substitution of the following subsection for subsection (1): Amendment of section 5 of Prevention of Corruption (Amendment) Act 2001.

45 “(1) If a judge of the District Court is satisfied by information on oath of a member of the Garda Síochána, or if a member of the Garda Síochána not below the rank of superintendent is satisfied, that there are reasonable grounds for suspecting that evidence of or relating to the commission of an offence or suspected offence under the Prevention of Corruption Acts 1889 to

2001 punishable by imprisonment for a term of 5 years or by a more severe penalty ('an offence') is to be found in any place, he or she may issue a warrant for the search of that place and any persons found at that place.”.

(2) This section shall not affect the validity of a warrant issued under section 5 of the Prevention of Corruption (Amendment) Act 2001 before the commencement of this section and such a warrant shall continue in force in accordance with its terms after such commencement. 5

Amendment of
Criminal Justice
(Theft and Fraud
Offences) Act 2001.

36.—(1) The Criminal Justice (Theft and Fraud Offences) Act 2001 is amended— 10

(a) in section 48, by the substitution of the following subsection for subsection (2):

“(2) If a Judge of the District Court is satisfied by information on oath of a member of the Garda Síochána that there are reasonable grounds for suspecting that evidence of, or relating to the commission of, an offence to which this section applies is to be found in any place, the judge may issue a warrant for the search of that place and any person found there.”, 15 20

and

(b) in section 52, by the substitution of the following subsection for subsection (2):

“(2) If a Judge of the District Court is satisfied by information on oath of a member of the Garda Síochána that— 25

(a) the Garda Síochána are investigating an offence to which this section applies,

(b) a person has possession or control of particular material or material of a particular description, and 30

(c) there are reasonable grounds for suspecting that the material constitutes evidence of or relating to the commission of the offence,

the judge may order the person to— 35

(i) produce the material to a member of the Garda Síochána for the member to take away, or

(ii) give such a member access to it,

either immediately or within such period as the order may specify.”. 40

(2) This section shall not affect the validity of a warrant issued under section 48, or an order made under section 52, of the Criminal Justice (Theft and Fraud Offences) Act 2001 before the commencement of this section and such a warrant or order shall continue in force in accordance with its terms after such commencement. 45

37.—Section 25 of the Petty Sessions (Ireland) Act 1851 is amended by the substitution of the following paragraph for paragraph 1:

Amendment of section 25 of Petty Sessions (Ireland) Act 1851.

5 “1. All warrants (except as otherwise provided by law) in proceedings in respect of offences punishable either on indictment or summarily issued by the District Court shall be addressed to the superintendent or an inspector of the Garda Síochána of the Garda Síochána district within which the courthouse in which the warrant is issued is situated or the person named in the warrant resides:”.

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38.—A warrant for the arrest of a person or an order of committal of a person may, notwithstanding section 26 of the Petty Sessions (Ireland) Act 1851, be executed by a member of the Garda Síochána in any part of the State.

Execution of certain warrants.